04-CV-6089

U.S. ... COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
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NEHEMIAH NASH #97A3995 PLAINTIFF,

-VS-

COMPLAINT(S)

MICHEAL McGINNIS; STANLEY SEPIOL; JAMES D. NEEHAN; GREGORY T. MANCS; MARK J. SHEREMETA; RAYMOND R. KEENAN; CHRISTOPHER F. KAMAS; DOUGLAS D. WESTERVELT; KATHLEEN A. WASHBURN; (?) COLLINS; LARRY C. GLEASON, DEFENDANTS,
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Preliminary Statement

This is a civil rights action filed by NEHEMIAH NASH, a state prisoner, for damages and injunctive relief under 42 USC §1983, alleging the deprivation of his right to Free Speech, Access to the Courts, free from unreasonable Search and Seizure and Due Process, in violation of the First, Fourth, Fifth and Fourteenth Amendments to the US Constitution.

Jurisdiction.

(1) The Court has jurisdiction over the plaintiff claims of violation of federal constitutional rights under 28 USC §§1331, 1343(3) and (4) and 2201.

Parties

(2) The plaintiff, NEHEMIAH NASH was incarcerated at Southport Correctional Facility ("SOUTHPORT") during the events described in this complaint.

(3) At all times pertinent to this Complaint, defendant MICHEAL McGINNIS was employed by the Department of Corrections as Superintendent of the SOUTHPORT, and was responsible for implementation of all applicable laws and regulations at SOUTHPORT. Defendant KATHLEEN A. WASHBURN was employed by the Department of Corrections as

Senior Mail and Supply Clerk, and together with defendants MARK J. SHEREMETA, RAYMOND R. KEENAN, DOUGLAS D. WESTERVELT, CHRISTOPHER F. KAMAS, LARRY C. GLEASON was also employed by the Department of Corrections as members of the prison correctional staff at SOUTHPORT, and along with STANLEY SEPIOL, a sergeant therein was in charge of handling incoming and outgoing prisoner mail.

(4) Defendant (?) COLLINS is a correctional officer employed at SOUTHPORT whose name is presently unknown to plaintiff.

(5) Each 'defendant' as listed above is sued both in their individual and official capacity

(6) All the defendants have acted, and continue to act, under color of state law at all times relevant to this complaint

Facts.

(7) Defendants KATHLEEN A. WASHBURN, MARK J. SHEREMETA, RAYMOND R. KEENAN; CHRISTOPHER F. KAMAS, DOUGLAS D. WESTERVELT; LARRY C. GLEASON; (?) COLLINS, acting both individually and jointly failed to mail and deliver, a considerable amount of correspondence, which plaintiff properly submitted to them for mailing or was in line to 'receive' during this period of incarceration at SOUTHPORT

(8) The various pieces of such correspondence dealt with legal, political and personal mater

(9) None of such correspondence threatened, contemplated or included plans for any criminal activity what so ever; none threatened or posed any clear and present danger of physical harm or violence to any person; none was obscene, and none was written in any form of code.

(10) Said unmailed correspondence includes but is not limited to letter(s) dated August 13th 2003 to a JOHNNIE L. COCHRAN, JR. [THE COCHRAN FIRM, SCHNEIDER KWID & S], and QUEENS CHILDRENS PSYCHIATRIC CENTER, along with the lack in deliverance of an assortment of letters, from numerous person(s) and agencies, of them, including, but not to be limited to a LINDA WRIGHT, MAUREEN ROLLINS and LEE-VAL NASH.

(11) Correspondence described in Paragraph(s) 8, 9, 10 above failed to reach the addressees to whom destined as a proximate result of interference or confiscation by defendants MARK J. SHEREMETA, RAYMOND R. KEENAN, CHRISTOPHER F. KAMAS, DOUGLAS D. WESTERVELT, LARRY C. GLEASON, (?) COLLINS and KATHLEEN A. WASHBURN and each of them, acting both individually and in a concert of action wherein each said defendant acquiesced, condoned, encouraged and assisted the actions of the others in a deliberate effort to single out plaintiff for harsh arbitrary and discriminatory treatment with regard to his correspondence in knowing disregard of applicable statewide prisoner mail regulations then in effect as set forth in USCA Const. Amend. 1, UCMJ, Art. 134, 10 USCA §934 - US v. Fox 48 MJ 518, review granted, 50 MJ 196, affirmed 50 MJ 444 - Thornburgh v. Abbot, 490 US 401, 109 S. Ct. 1874, 1878-79, 104 L. Ed 2d 459 (1989); Procunier v. Martinez, 416 US 396, 413, 94 S. Ct. 1800, 1811, 40 L. Ed 2d. 224 (1974); 60 Am Jur 2d Penal and Correctional Etc., §§ 50, 53 and 56; Witherow v. Paff, 52 F. 3d 264 (1995)

(12) Said correspondence was in fact permitted by the aforesaid mail regulations.

(13) Defendants MICHEAL McGINNIS, STANLEY SEPIOL, JAMES P. MEEHAN (sergeant), GREGORY T. MANOS (sergeant) and KATHLEEN A. WASHBURN, encouraged, directed, ratified, and knowingly acquiesced in the actions of defendants MARK J. SHEREMETA, RAYMOND R. KEENAN, CHRISTOPHER F. KAMAS, DOUGLAS D. WESTERVELT, LARRY C. GLEASON, (?) COLLINS, as described above, and did so both individually and in pursuance of a common plan, or design, deliberately singling out plaintiff for harsh, arbitrary and discriminatory treatment with regard to his correspondence, in knowing disregard of the fact that plaintiff's constitutional rights were thereby violated.

(14) The above described actions by defendants and each of them, deprivation plain-

tiffs of his civil rights including his rights to free speech and due process, as guaranteed by the First, Fifth and Fourteenth Amendments, to the United States Constitution and by Title 42 of the USC §1983.

Claim for Relief

(15) Plaintiff herein realleges and incorporates by reference, Paragraphs 7, 8, 9 and 10 and each and every allegation contained in such Paragraph, as though fully set forth herein.

(16) The actions of defendants KATHLEEN A. WASHBURN, MARK J. SHEREMETA, RAYMOND R. KEENAN, CHRISTOPHER F. KAMAS, DOUGLAS D. WESTERVELT, LARRY C. GLEASON and (?) COLLINS, in depriving plaintiff without need or provocation his correspondence privileges, constituted the violation(s) of free speech and due process, as guaranteed by the First, Fifth and Fourteenth Amendments, and of interest to the penological goals of incarceration under the law of the Presidents Comm'n; The Courts 15; SILVENKO, CRIME LAW and CORRECTIONS 568 (1966), Baldt, *Recent Trends in Criminal Sentencing*, Fed. Prob., March 1963, p. 3; Hart, *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROB 401, 402-06 (1958).

(17) The failure of defendants MICHEAL McGINNIS and STANLEY SEPICK, to take disciplinary or other action to curb the known pattern of psychological abuse of inmate by defendants KATHLEEN A. WASHBURN, MARK J. SHEREMETA, RAYMOND R. KEENAN, CHRISTOPHER F. KAMAS, DOUGLAS D. WESTERVELT, LARRY C. GLEASON and (?) COLLINS, constituted deliberate indifference, and contributed to and proximately caused the above described violation(s), as well as of the Eighth Amendment rights, secured by the US Constitution.

(18) The actions of all defendants mentioned above, denied the plaintiff his right to be free from personal humiliation and mental anguish and injuries to the quality of his life; the like-placement in segregation and careless loss of privilege(s); emotional harm; emotional distress; limiting plaintiffs ability to work, causing nightmares; loss of his friends; and discouragement is keeping healthy relationship with

the community.

(14) Said actions have caused actual damages to plaintiff in his individual and personal capacities of interest to the penological goals of incarceration, due to defendants 'continuous' aggravated, callous, and malicious character.

Relief Requested

WHEREFORE, plaintiff requests that the court grant the following relief:

A. ISSUE A DECLARATORY/JUDGEMENT STATING THAT:

(1) The psychological abuse of the plaintiff by defendants WASHBURN, SHEREMETA, KEENAN, KAMAS, WESTERVELT, GLEASON and COLLINS violated the plaintiffs right under the Eighth Amendments goal to produce a "healthy rehabilitative environment", and constituted an assault upon plaintiffs First, Fourth and Fifth and Fourteenth Amendments' rights.

(2) Defendants McGINNIS' and SEPIOL'S failure to take action to curb the psychological abuse of prisoner violated the plaintiffs rights under the Eighth Amendment to the US Constitution and constituted a continuous assault upon the "healthy rehabilitative environment" as depicted above.

(3) Defendant(s) WASHBURN, SHEREMETA, KEENAN, KAMAS, WESTERVELT, GLEASON and COLLINS' actions in depriving plaintiff of his correspondence privileges and defendant(s) McGINNIS and SEPIOLS' actions in sustaining it, violated the plaintiffs rights under the Due Process Clause of the Fourteenth Amendment.

(4) Defendant McGINNIS' actions in failing to provide a "healthy rehabilitative environment" and productively stabilized atmo-

sphere for the plaintiff, violated and continues to violate the plaintiffs rights under the Eighth Amendment.

B. ISSUE AN INJUNCTION ORDERING DEFENDANT McGINNIS TO:

(1) Advocate 'stricter' obedience to the SUPERVISION and CONTROL of INMATE PACKAGES and CORRESPONDENCE, and harsher punishments for violations thereof.

(2) Observe 'impartial' means of investigating claims of violations therein, and permit 'immediate' relief here at 'This' Court in place of.

(3) Carry out without delay the attentive care necessary for the 'fairness' involved.

C. ISSUE AN INJUNCTION ORDERING DEFENDANTS McGINNIS, SEPIOL, MEEHAN, AND NIAMOS OR THEIR AGENTS TO:

(1) Immediately arrange for the plaintiffs mail to both be delivered and mailed on time.

(2) Release the plaintiff from the punitive inflictions subject to, and restore all rights and privileges relevant to.

D. ISSUE AN INJUNCTION:

(1) Granting a motion for a Temporary Restraining Order as a Preliminary Injunction.

E. AWARD COMPENSATORY DAMAGES IN THE FOLLOWING AMOUNTS:

(1) $9,380.00 jointly and severally against defendants, SHEREMETA, KEENAN, KAMAS, WESTERVELT, GLEASON, COLLINS and WASHBURN for the psychological and emotional injuries sustained as a result of the plaintiffs deprivation.

(2) $7,000.00 jointly and severally against defendants McG-

INNIS and SEPIOL for the punishment, psychological and emotional injury resulting from their denial of due process in connection with the plaintiff's numerous complaints, both scribed and verbatim, about their failure to provide an adequately positive "atmosphere."

F. AWARD PUNITIVE DAMAGES IN THE FOLLOWING AMOUNTS:

(1) $180.00 each against defendants WASHBURN, SHEREMETA, KEENAN, KAMAS, WESTERVELT, GLEASON and COLLINS.

(2) $180.00 each against defendants McGINNIS and SEPIOL.

G. GRANT SUCH OTHER RELIEF AS IT MAY APPEAR THAT PLAINTIFF IS ENTITLED.

[SECOND CLAIM]

Parties

(1) The plaintiff, NEHEMIAH NASH was incarcerated at Southport Correctional Facility ("SOUTHPORT") during the events described in this complaint.

(2) At all times pertinent to this Complaint defendant MICHEAL McGINNIS was employed by the department of Corrections as Superintendent of SOUTHPORT, and was responsible for implementation of all applicable laws and regulations at SOUTHPORT; JAMES P. MEEHAN (sergeant) and GREGORY T. MANOS (sergeant) and CHRISTOPHER F. KAMAS and LARRY C. GLEASON was also employed by the Department of Corrections as members of the prison correction staff at SOUTHPORT, and was in charge of A-Block, Level One.

(3) Plaintiff herein realleges and incorporates by reference Paragraphs 5, and 6 of first claims' Parties, and each and every allegation contained in such Paragraph(s), as though fully set forth herein.

Facts

(4) Defendants, JAMES P. MEEHAN, GREGORY T. MANOS, CHRISTOPHER F. KAMAS and

LARRY C. GLEASON acting both individually and jointly, did unlawfully and without warrant search plaintiffs housing location, and seize his property on numerous occasions.
(6) This included various pieces of correspondence, and dealt with documents of legal, political and personal significance, though not to be limited to.
(c) None of such, threatened, contemplated or included plans for any criminal activities whatsoever; none threatened or posed any clear and present danger of physical harm or violence to any person; none was obscene, and none was written in any form of code.
(7) Said property included but is not limited to the following: five legal letters dated May 20th & 21st of 2003 from a LUCIEN J. LECLAIRE JR., GLENN S. GOORD and THOMAS G. EAGEN; CORC decision(s) and various peices of Trail transcripts.
(8) Property as described in Paragraphs 5, 6 and 7 above, as a proximate result of interference or search and unlawful siezure, by defendants JAMES P. MEEHAN, GREGORY T. MANOS, CHRISTOPHER F. KAMAS and LARRY C. GLEASON, and each of them, acting both individually and in a concert of action wherein each said defendant acquiesced, condoned and encouraged and assisted the actions of the others in a deliberate effort to single out plaintiff for, harsh, arbitrary and discriminatory treatment with regard to his property of legal correspondence(s) and of legal character in knowing disregard of applicable holdings, contrary to in effect as set forth in USCA Const. Amend., 1, 4, 5 and 14th; Hudson v Palmer 468 US 517, 529-30 (1984); compare with, US v Cohen 796 F.2d 20, 22-24 (2d Cir. 1986).
(9) Said property was secured in fact by the above said law.
(10) Defendants MICHAEL MCGINNIS, JAMES P. MEEHAN, GREGORY T. MANOS encouraged, directed, ratified and knowingly acquiesced in the actions of defendants CHRISTOPHER F. KAMAS and LARRY C. GLEASON, as described above, and did so both individually and in pursuance of a common plan, or design, deliberately singling

out plaintiff for harsh, arbitrary and discriminatory treatment with regard to his correspondence/documents in knowing disregard of the fact that plaintiff's constitutional rights were thereby being violated.

(11) The above described actions by defendants, and each of them, deprived plaintiff of his civil rights, including his rights to be free from unreasonable searches and seizures and due process, as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and by Title 42 of the US Code §1983

(12) Said actions have caused actual damage to plaintiff realleging and incorporating the principalities of facts of First claim Paragraph 14 and "... THE FREE EXCERCISE ... OR THE RIGHT ... TO PETITION ..." as guaranteed by the First Amend.

Claims for Relief.

(13) Plaintiff herein realleges and incorporates by reference, Paragraphs 4, 5 and 6, and each and every allegation contained in each Paragraph, as though fully set forth herein.

(14) The actions of defendants JAMES P. MEEHAN, GREGORY T. MANOS, CHRISTOPHER F. KAMAS, and LARRY C. GLEASON, in depriving plaintiff without need or provocation his 'property' of both legal correspondence and legal matter, constituted the violation(s) of free speech and due process, as guaranteed by the First, Fifth, Fourth and Fourteenth Amendments.

(15) The failure of defendants MICHEAL McGINNIS, JAMES P. MEEHAN, and GREGORY T. MANOS, to take disciplinary or other action to curb the known pattern of authoritative abuse of inmate by defendants JAMES P. MEEHAN, GREGORY T. MANOS, CHRISTOPHER F. KAMAS, LARRY C. GLEASON, constituted deliberate indifference, and contributed to and proximately caused the above described violation(s), as well as of the Eighth Amendments rights, secured by the US Constitution.

(16) The actions of all defendants mentioned above, also, drawing upon the "... FREE

EXCERCISE - OR THE RIGHT - TO PETITION - ", as, again, guaranteed by the First Amend, here attaching it to the above and before mentioned, and together with denied and delayed plaintiff, this right as depicted, and established all requisites in defining hinderance in Access to the Court, and the continuous prevention thereof.

Relief Requested

WHEREFORE, plaintiff requests that the court grant the following relief:

A. ISSUE A DECLARATORY JUDGEMENT STATING THAT:

(1) The authoritative abuse of the plaintiff by defendants MEEHAN, MANOS, KAMAS and GLEASON, violated the plaintiffs' right under the Fourth Amendments right "against unreasonable searches and siezures", and constituted an assault upon plaintiffs, First, Fifth and Fourteenth Amendment rights.

(2) Defendant McGINNIS' failure to take action to curb the authoritative abuse of prisoner, violated the plaintiffs rights under the Fourteenth Amendment to the U.S. Const., and constituted a constant and 'continued' assault upon the inmates First, Fourth and Fifth Amendment rights.

(3) Defendant McGINNIS' actions in failing to provide a 'positive' "atmosphere" for the plaintiff, violated and continues to violate plaintiff's rights under the Fourteenth Amendment Due Process Clause of the US Constitution.

B. ISSUE AN INJUNCTION ORDERING DEFENDANT:

(1) Advocate 'stricter' obedience to the SUPERVISION OF INMATES and the SUPERVISION OF INMATE HOUSING UNITS, and 'harsher' penalties for the violations thereof.

(2) Implement 'impartial' means of investigating claims of violation(s),

and relevant to, and permit immediate relief here at this Court in place of, that does not further the prevention of,

(3) Carry out without delay the attentive care necessary to ensure the 'fairness' requested by law.

C. ISSUE AN INJUNCTION ORDERING DEFENDANTS McGINNIS, MEEHAN, MANOS, OR THEIR AGENTS TO:

(1) Release the plaintiff immediately from the restricted punitive inflictions subject to.

D. ISSUE AN INJUNCTION:

(1) Granting a motion for a Temporary Restraining Order as a Preliminary Injunction.

E. AWARD COMPENSATORY DAMAGES IN THAT FOLLOWING AMOUNTS:

(1) $3,300.00 jointly and severally against defendants, KAMAS and GLEASON, for depriving inmate of his Access to the Court

(2) $3,300.00 jointly and severally against defendants McGINNIS, MEEHAN and MANOS, for the punishment resulting from their denial of due process in connection with the plaintiffs numerous complaints, both scribed and verbatim.

F. AWARD PUNITIVE DAMAGES IN THE FOLLOWING AMOUNTS:

(1) $60.00 each against defendants KAMAS and GLEASON.

(2) $60.00 each against defendants McGINNIS, MEEHAN and MANOS

G. GRANT SUCH OTHER RELIEF AS IT MAY APPEAR THAT PLAINTIFF IS ENTITLED.

12 of 12

NEHEMIAH NASH
#97A3995
SOUTHPORT CORR. FAC.
P.O. BOX 2000
PINE CITY, NY, 14871

SWORN TO BEFORE ME THIS
1 DAY OF March 20 04
Joey V. Clinton
New York State Notary Public
No. 01CL6067960
Livingston County
Commission Expires December 24, 20 05

cc: US District Court, Western District
file: